IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1151 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
SANABHAI RAISINGBHAI PARMAR & 2 - Defendant(s)

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Appearance :
MR SB VAKIL for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1, 1.2.1,1.2.2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Baroda passed in M.A.C.P. No.29 of 1981 dated 21.07.1982.

2.0 The brief facts of the case are that on 22.05.1980 present opponent No.1 was traveling as labourer on the truck driven by present opponent No.2 and owned by present opponent No.3 and when

they crossed Udalpur bridge, the opponent No.2 lost control of the said truck and it toppled down in 20' feet deep ditch. On account of the said accident, opponent No.1 received serious bodily injuries. Therefore, he filed a petition claiming an amount of Rs.50,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought to have considered that opponent No.1 was an employee of opponent No.3-insured, and hence, liability of the appellant is limited under Workmen's Compensation Act. Hence, the impugned judgment and award deserves to be quashed and set aside.

4.0 Heard learned counsel for the appellant. Though, served none appears on behalf of

opponents. From the documents produced on record, it transpires that opponent No. 1 was the employee of opponent No. 3 and no additional liability appears to have been accepted by the appellant Insurance Company under its policy for the employees of opponent No. 3. Therefore, keeping in mind the provisions of the Workmen's Compensation Act, 1923, the appellant Insurance Company shall be liable to pay compensation under the said Act and not under The M. V. Act.

5.0 In the result, the appeal is partly allowed. The appellant-Insurance Company will be liable to pay an amount of Rs.19,670/- by way of compensation to the claimant under the provisions of the Workmen's Compensation Act, 1923. However, it is made clear that the claimant will be entitled to recover the balance amount from the employer, i.e. opponent No. 3. No order as to costs.

(K. S. JHAVERI, J.)

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